

APPENDIX B

KENTUCKY PUBLIC SERVICE COMMISSION ORDER

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF EAST KENTUCKY)	
NETWORK, LLC D/B/A APPALACHIAN)	
WIRELESS FOR DESIGNATION AS AN)	CASE NO. 2005-00045
ELIGIBLE TELECOMMUNICATIONS)	
CARRIER)	

O R D E R

On January 26, 2005, East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless") filed an application seeking Eligible Telecommunications Carrier ("ETC") status within the territory of which it is licensed to operate. This company is owned by three telephone cooperatives and two investor-owned telephone companies.¹ The operating management is separate from the ownership of the company.

The Commission set a procedural schedule in this case that allowed for any public comments, data requests, and requests for a hearing. No comments on the application have been filed and no request for a hearing has been made.

Discussion

47 U.S.C. § 254(e) provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support." Pursuant to Section 214(e)(1), a common carrier designated as an

¹ Cellular Services Inc. (a subsidiary of Foothills Rural Telephone Cooperative, Inc.), Mountain Telecommunications Inc. (a subsidiary of Mountain Rural Telephone Cooperative, Inc.), Peoples Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and Gearheart Communications, Inc.

ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.²

Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations. Under Section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of Section 214(e)(1).³ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁴

An ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to Section 254(c); (2) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services"; (3) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution"; and (4) if the petitioner meets the definition of a "rural telephone company" pursuant to Section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a

² 47 U.S.C. § 214(e)(1).

³ 47 U.S.C. § 214(e)(6).

⁴ Id.

detailed description of the geographic service area for which it requests an ETC designation from the Commission.

Offering the Services Designated for Support

Appalachian Wireless has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, Appalachian Wireless is authorized to provide cellular mobile radiotelephone service ("CMRS"). Appalachian Wireless certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in Section 54.101(a) of the Federal Communications Commission's ("FCC") rules. Appalachian Wireless has also certified that, in compliance with Section 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

Offering the Supported Services Using a Carrier's Own Facilities

Appalachian Wireless states that it intends to provide the supported services using its existing network infrastructure. Appalachian Wireless currently provides the service using its facilities-based digital network infrastructure and licensed CMRS spectrum in Kentucky.

The Commission finds that Appalachian Wireless has demonstrated that it satisfies the requirement of Section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.

Advertising Supported Services

Appalachian Wireless has demonstrated that it satisfies the requirement of Section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefore using media of general distribution. In its petition, Appalachian Wireless states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis, in newspapers, magazines, television, and radio in accordance with Section 54.201(d)(2) of the FCC's rules.

Non-Rural Study Areas

The FCC previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of Section 214(e)(1) of the Act.⁵ The Commission finds that Appalachian Wireless's public interest showing here is sufficient, based on the detailed commitments Appalachian Wireless has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; that is, if Appalachian Wireless has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.

Rural Study Areas

In considering whether designation of Appalachian Wireless as an ETC in areas served by rural telephone companies will serve the public interest, the Commission

⁵ See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, the Commission must weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

The Commission finds that Appalachian Wireless's universal service offering will provide a variety of benefits to customers. For instance, Appalachian Wireless has committed to provide customers access to telecommunications and data services where they do not have access to a wire-line telephone. In addition, the mobility of Appalachian Wireless's wireless service will provide benefits such as access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Moreover, Appalachian Wireless states that it offers larger local calling areas than those of the incumbent Local Exchange Carriers it competes against, which could result in fewer toll charges for Appalachian Wireless's customers.

Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.⁶ Appalachian Wireless asserts that granting ETC designation to

⁶ See Highland Cellular Order 19 FCC Rcd at 6431, para. 20; Virginia Cellular Order, 19 FCC Rcd at 1574-75, para. 26.

Appalachian Wireless will provide rural consumers the benefits of competition through increased choices and further the deployment of new telecommunications services. It also asserts that granting the request will not harm consumers. Appalachian Wireless has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

Designated Service Areas

The Commission finds that Appalachian Wireless should be certified as an ETC in the requested service areas served by non-rural telephone companies, as listed in application. The Commission also finds that Appalachian Wireless should be certified as an ETC in the requested service areas served by rural telephone companies, as listed in the application. However, Appalachian Wireless's service area for each rural telephone company does not encompass the entire study area of each rural telephone company. Therefore the study areas of the affected rural carriers must be redefined to smaller study areas such that they will correspond to the wireless carrier's service area. The Commission finds that the study areas of the affected rural telephone companies should be redefined as necessary to match the licensed service area of the applicant. Appalachian Wireless should petition the FCC for concurrence.

Regulatory Oversight

In addition to its annual certification filing under rule Sections 54.513 and 54.314, NPCR, Inc., d/b/a Nextel Partners, the first wireless carrier to qualify as an ETC, agreed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers

were unfulfilled for the past year.⁷ The Commission finds that Appalachian Wireless should be required to file this information and make any other information as it relates to service available to the Commission.

IT IS THEREFORE ORDERED that:

1. Appalachian Wireless shall be designated an ETC in the geographic areas requested and as listed in Appendix A, attached hereto and incorporated herein.
2. Appalachian Wireless shall offer universal support services to consumers in its service area.
3. Appalachian Wireless shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including services offered by another.
4. Appalachian Wireless shall advertise the availability of and charges for these services using media of general distribution.
5. Appalachian Wireless is hereby certified to be in compliance with the FCC's criteria, in accordance with 47 U.S.C. § 254(e), and therefore eligible to receive Universal Service Fund support for the current certification period.
6. By September 1, 2006, and each September 1 thereafter, Appalachian Wireless shall make its annual certification filing in Administrative Case No. 381⁸ and shall submit additional records as described herein.

⁷ Case No. 2003-00143, Petition of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky, December 16, 2004.

⁸ Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support.

7. Appalachian Wireless shall file with the Commission a copy of its petition to the FCC seeking concurrence in the redefinition of its service area.

8. A copy of this Order shall be served upon the FCC and the Universal Service Administration Company.

Done at Frankfort, Kentucky, this 11th day of August, 2005.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2005-00045 DATED AUGUST 11, 2005

Designated areas for which East Kentucky Network, LLC d/b/a Appalachian Wireless is granted ETC Designation

1. Rural Telephone Company Study Areas

260406 Foothills Rural Telephone Company
260408 Gearheart Communications Co. Inc. dba Coalfields Telephone Co.
260415 Peoples Rural Telephone Cooperative Corporation, Inc.
260419 Thacker-Grigsby Telephone Company
260411 Leslie County Telephone Company, Inc.¹
260414 Mountain Telephone Cooperative, Inc.²
269691 Kentucky Alltel, Inc. London³

2. Non-Rural ILEC Wire Centers

265182 BellSouth – KY

ALLNKYMA	INEZKYMA	MCWLKYMA	PRBGKYES	VIRGKYMA
BYVLKYMA	JCSNKYMA	NEONKYES	SWSNKYMA	WRFDKYMA
ELCYKYES	MARTKYMA	PNVLKYMA	SNTNKYMA	WYLDKYES
FDCKKYES	MCCRKY	PKVLKYMA	STONKYMA	WHBGKYMA
FEBRKYMA				

269690 Kentucky ALLTEL, Inc. - Lexington

HZRDKYXA	LTWDKY	VICCKYXA		
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¹ East Kentucky Network, LLC only requests designation as an ETC in the wire centers CANOKYXA and BCKHKYXE. Subject to concurrence of the FCC the request is granted.

² East Kentucky Network, LLC only requests designation as an ETC in the wire centers JPTHKYXA, HZGRKYXA, EZELKYXA, SNDHKYXA, CMTNKYXA, and WLBTKYXA. Subject to concurrence of the FCC the request is granted.

³ East Kentucky Network, LLC only requests designation as an ETC in the wire centers IRVNKYXA and JNKNKYXA. Subject to concurrence of the FCC the request is granted.